

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMAR OSORIO BATALLA,

Petitioner,

v.

ERIC HOLDER, Attorney General of the United
States,

Respondent.

Case No. C13-185-RSL-BAT

**REPORT AND
RECOMMENDATION**

I. INTRODUCTION

On January 30, 2013, petitioner Omar Osorio Batalla, proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Dkt. No. 3. Petitioner asserts that his custody by the United States Immigration and Customs Enforcement (“ICE”) is unlawful and requests that the Court order respondent to remove the immigration detainer placed on him at the King County Jail.

II. BACKGROUND

On April 17, 2012, petitioner was arrested and taken into ICE custody. Dkt. No. 8 at 1. On May 10, 2012, an Immigration Judge granted petitioner release on bond in the amount of \$9000. Id. at 2. Petitioner posted bond and was released from ICE custody on May 17, 2012. Dkt. No. 3 at 4-9. Following his release, petitioner was arrested and detained at the King County

1 Jail for charges pre-dating his May 10, 2012, bond hearing. Dkt. No. 8 at 2. On February 1,
 2 2013, petitioner and was taken back into ICE custody upon his release from the King County Jail
 3 and was released from ICE custody on the same day based on the prior \$9000 bond. *Id.*

4 On March 8, 2013, respondent filed a motion to dismiss the petition for mootness. Dkt.
 5 No. 7. Respondent represented that petitioner currently remains free on bond. Dkt. No. 8 at 2.

6 III. DISCUSSION

7 Under 28 U.S.C. § 2241, a writ of habeas corpus “shall not extend to a prisoner unless . . .
 8 [h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28
 9 U.S.C. § 2241(c)(3). The “in custody” requirement is satisfied at the time the petition is filed.
 10 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citations omitted). To maintain a habeas claim, a
 11 petitioner must continue to have a personal stake in the outcome of the suit throughout “all stages
 12 of federal judicial proceedings.” *United States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001).
 13 At any stage of the proceedings, a petition may become moot “because it no longer present[s] a
 14 case or controversy under Article III, § 2, of the Constitution.” *Spencer*, 523 U.S. at 7. “For a
 15 habeas petition to continue to present a live controversy after the petitioner’s release or
 16 deportation, however, there must be some remaining collateral consequences that may be
 17 redressed by success on the petition.” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007) (citing
 18 *Spencer*, 523 U.S. at 7).

19 Here, the relief sought in the habeas petition is no longer available and there are no
 20 collateral consequences that may be redressed. *See id.* (“[W]here the grounds for habeas relief
 21 will not redress collateral consequences, a habeas petition does not continue to present a live
 22 controversy once the petitioner is released from custody.”). The habeas petition, therefore, has
 23 become moot and should be dismissed. *See id.*; *see also Cooney v. Edwards*, 971 F.2d 345, 346

1 (9th Cir. 1992)(holding that the District Court properly dismissed plaintiff's claims that had
2 become either moot or unripe).

3 IV. CONCLUSION

4 Therefore, it is recommended that respondent's motion to dismiss be GRANTED, and
5 this matter be dismissed with prejudice. A proposed order accompanies this Report and
6 Recommendation.

7 Any objections to this Recommendation must be filed and served upon all parties no later
8 than **March 26, 2013**. If no objections are filed, the matter will be ready for the Court's
9 consideration on **March 29, 2013**. If objections are filed, any response is due within 14 days
10 after being served with the objections. A party filing an objection must note the matter for the
11 Court's consideration 14 days from the date the objection is filed and served. Objections and
12 responses shall not exceed ten (10) pages. The failure to timely object may affect the right to
13 appeal.

14 DATED this 12th day of March, 2013.

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17 BRIAN A. TSUCHIDA
18 United States Magistrate Judge
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